IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3885 of 2004

Between:

T.Gurrappa Reddy, S/o.Guranna,aged about 42 years, R/o.23-117, Venkannapalem Dibbapalem Post, Pedagantiyada, Visakhapatnam-44

..... PETITIONER

AND

1. M/s.Rastreeya Ispat Nigam Limited, rep.by its GeneralManager,Visakhapatnam Steel Plant, Visakhapatnam.

2. Deputy Chief Superitendent(CMS)/ES&FDY and Disciplinary Authority, M/s.Rastreeya Ispat Nigam Ltd, Visakhapatnam Steel Plant, Visakhapatnam.

RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may I be pleased to declare the action of the respondents in continue to keep the petitioner under suspension from service pursuant to the order No.WK/ES & FDY/2003/1337, dated 23.7.2003 as arbitrary, consequentially to issue a writ, order or direction more particularly one in the nature of writ of mandamus setting aside the order of suspension dated 23.7.2003 of the petitioner from service and direct the respondents to reinstate the petitioner into service forthwith with all consequential benefits in the interest of justice.

Counsel for petitioner: Mr. G.R AMA GOPAL Counsel for the Respondent Nos. l and 2.: MR.V.RAVINDER RAO

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3911 of 2004

Between:

G.Trinadha Reddy S/o.Appala Reddy, aged about 41 years,
R/o.46-7-12, Bhagavari Street, Dondaparthy ,Visakhapatnam-16.

..... PETITIONE

AND

1 M/s.Rastreeya Ispat Nigam Ltd., rep.by its General Manager, Visakhapatnam Steel Plant, Visakhapatnam.
2 Deputy Chief Manager(T)/WMD and Disciplinary Authority M/s.Rastreeya Ispat Nigam Ltd., Visakhapatnam Steel Plant,
Visakhapatnam.

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the action of the respondents in continuing to keep the petitioner under suspension from service pursuant to the order No.WK/WMD/(109234)/1138, dated 23.7.2003 as arbitrary consequentially to issue a writ, order or direction more particularly one in the nature of writ of Mandamus setting aside the order of suspension dated 23.7.2003 of the petitioner from service and direct the respondents to reinstate the petitioner into service forthwith with all consequential benefits in the interest of justice.

Counsel for the Petitioner: MR.G.RAMA GOPAL

Counsel for the Respondent Nos.1 and 2: MR.V.RAVINDER RAO

The Court Made the Following

HONOURABLE SRI JUSTICE K.C.BHANU

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WRIT PETITION Nos.3885 of 2004 and 3911 of 2004

COMMON ORDER;

The Writ Petition No.3885 of 2004 is filed to declare the action of the respondents in continuing to keep the petitioner under suspension from service pursuant to the order dated 23-07-2003 as arbitrary and illegal. W.P.No.3911 of 2004 is filed by another writ petitioner questioning the same as suspension order. Therefore, both the writ petitions can be disposed of by a common order at the request of the counsel for both the parties.

The C.B.I. registered a case in Cr.No.20 ((A) /2003 dated 18-07-2003 for the alleged offences under sections 120(B), 420,477-A I.P.C.and l3(2) r/w 13(1)(d) of Prevention of Corruption Act, 1998. The persons are arrayed as accused l and 2 respectively. After a lapse of six months, there is no progress either before the Criminal Court or in the departmental proceedings. Therefore, the action of the respondents in keeping them under suspension indefinitely is arbitrary and illegal. The allegations in the first information report are vague and imaginary. The suspension order is contrary to the scope of the standing orders. It is also stated that after 180 days, subsistence allowance has to be reviewed from half of the basic wage and dearness allowance to ¾th of the basic wage and dearness allowance. Therefore, these two writ petitions are filed.

The respondents filed common counter in both the writ petitions stating that the accused committed serious offences of pilfering many truck loads of low ash metallurgical coke worth more than rupees twenty five lakhs and sold the same to the foundries, piston factories and brick industries. On coming to know about the launching of prosecution by the C.B.I., the authorities concerned passed the impugned orders in accordance with the clause 31(1)of the Certified Standing Orders. With regard to the raising of subsistence allowance, the respondents are awaiting a reply from investigating agency about the information for the reasons for the delay in launching the prosecution. Mere administrative delay does not vitiate the decision to place the petitioner under suspension. Therefore, the writ petitions are devoid of merits and liable to be dismissed.

The learned counsel appearing for the petitioners contended that despite the

enquiry report filed by the petitioners, the suspension order is being continued, the subsistence allowance is not raised and that the person who passed the suspension order has not applied his mind and the impugned proceedings are not in conformity with the Certified Standing Orders and therefore, he prays to set aside the suspension order.

On the other hand, it is contended by the learned counsel for the respondents that the disciplinary authority, after satisfying himself about the serious nature of the allegations, placed the petitioners under suspension and the suspension is only a pending enquiry and after getting information from the authorities concerned, steps will be taken to raise subsistence allowance. The relevant portion of the impugned proceedings reads as follows:

"It has been reported that a case has been registered by the Central Bureau of Investigation, Visakhapatnam against you under Section 120-B, 420, 477-A of IPC and section 13(2) read with 13(1) d of P.C.Act, 1988. Since the allegations are of serious nature, you are hereby suspended from duty with immediate effect pending further proceedings and final orders in the matter, in terms of clause 31.1 of the Certified Standing Orders applicable to the workmen of the company"

It is not in dispute that Certified Standing Orders of the respondents would govern the service conditions of the employees. Clause 31(l) reads as under:

"Where the disciplinary proceedings contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial, and the disciplinary authority is satisfied with, it is necessary or desirable to place the workmen under suspension. The workmen may be suspended by an order in writing with effect from such date as may be specified in that order. A copy of order of suspension shall be supplied to the workmen"

A perusal of the above provision makes it clear that when the disciplinary authority is satisfied with regarding registration of case by police, it is necessary or desirable to place the workmen under suspension, and the suspension order can be issued. Basing on the registration of the case by the Central Bureau of Investigation under Section 120-B, 420 and 437 of I.P.C and Section l3(2) r/w 13(l)d of Prevention of Corruption Act, 1998 and as the allegations levelled against the petitioner are of very serious in nature, the petitioner was placed under suspension. Therefore, as seen from the impugned proceedings, the disciplinary authority must have satisfied with the registration of the case and in view of the serious allegations, the petitioners

were placed under suspension.

The learned Counsel appearing for the petitioner relied upon a decision reported in **K.SUKHENDAR REDDY Vs. STATE OF A.P.** wherein, the Division Bench of this Court held as follows:

"It is also well settled that where the employees should or should not continue in their office during the period of enquiry, is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with misconduct in question."

In this case, no *mala fidies* are attributed against the person, who issued the suspension order. Basing on the registration of crime against the petitioners, they were suspended from service. At the stage of suspension, the First Information Report can be taken as a *prima facie* evidence. In view of serious allegations levelled against the petitioners, the disciplinary authority rightly placed the petitioners under suspension. Therefore, the suspension order does not suffer from any legal infirmities so as to call for interference by this Court.

Coming to the enhancement of subsistence allowance, the petitioner is entitled to 3/4th of basic wage and Dearness allowance put together. Provided further, when the enquiry of criminal proceedings are prolonged beyond a period of 180 days for reasons attributed to the workmen, the subsistence allowance for the period extending 180 days has to be reviewed and the petitioner-workman is entitled to 3/4th of the such wages. As seen from the clause 31.2.1 of the Certified Standing Orders, the respondents' counsel contended that they addressed letters to the CBI with regard to the stage of investigation. Therefore, after receipt of such information, and if that proceedings are not being prolonged by the petitioners, then they will enhance subsistence allowance. They cannot dispute that payment of subsistence allowance is not a bounty, but it is a matter of right that every suspended employee is entitled to the same. As per the Standing Orders, if the enquiry of criminal proceedings is prolonged beyond 180 days for the reasons attributed, to employee then the subsistence allowance has to be reviewed. Therefore, with regard to the payment of subsistence allowance, a direction can be given to the respondents.

Having regard to the facts and circumstances of the case, it is observed that there are no grounds to interfere with the suspension order dated 23.7.2003, however, the respondents are directed to enhance the subsistence allowance at the rate of 3/4th of basic wage and dearness allowance as contemplated under 31.2.1 of the certified Standing Orders within a period of four weeks from today after obtaining necessary information from the Central Bureau of Investigation.

With the above observations, these two writ petitions are disposed of. In the circumstances of the case, there shall be no order as to costs.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER.

23-06-2004.

DVS

To

1 The General Manager, M/s.Rastreeya Ispat Nigam Ltd., Visakhapatnam Steel Plant, Visakhapatnam.
2 Deputy Chief Manager(T)/WMD and Disciplinary Authority M/s.Rastreeya Ispat Nigam Ltd., Visakhapatnam Steel Plant,
Visakhapatnam.

3. Two CDs.